Jano Graphics, Inc. *and* Communications Workers of America, Local 14904, Southern California Typographical and Mailer Union. Cases 31–CA–24241, 31–CA–24350, and 31–CA–24592

June 12, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND ACOSTA

On September 28, 2001, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent filed exceptions, a supporting brief, and an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.[2]

We agree with the judge that the Respondent violated Section 8(a)(5) and (1) of the Act by making unilateral changes in its employees' terms and conditions of employment. We need not decide whether there was *in fact* an impasse on July 29, 1999, when the Respondent presented its "Best and Final Offer" and requested that the Union submit the offer to the unit employees for a ratification vote. Even if there had been an impasse at that time, there was no legally cognizable impasse on January 26, 2000, the date of the Respondent's unilateral implementation. This is so for two reasons. First, any impasse on July 29 was broken on August 4, when the Union informed the Respondent that it had new proposals and was seeking further bargaining.[3] Second, the Respondent's continued insistence on a nonmandatory subject of bargaining—the ratification vote by unit employees—and its refusal to bargain on and after August 4 tainted any subsequent impasse. Taken together, these unfair labor practices precluded the Respondent from lawfully implementing its final offer in January. See *Royal Motor Sales*, 329 NLRB 760, 762 (1999), enfd. mem. *Royal Motor Sales v. NLRB*, No. 99-1428 (D.C. Cir. 2001).

We further agree that the Respondent's withdrawal of recognition from the Union was unlawful. We rely upon the fact that the employee petition, on which the withdrawal of recognition was premised, was tainted. It was circulated on January 28, 1 day after the Respondent's announcement that the unlawful unilateral changes had been implemented.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Jano Graphics, Inc., Ventura, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice should be substituted for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with Communications Workers of America, Local 14904, Southern California Typographical and Mailer Union by unilaterally implementing our final contract offer in the absence of a lawful impasse.

WE WILL NOT condition bargaining with the Union on submission of our proposal to the bargaining unit employees for ratification.

WE WILL NOT refuse to meet and bargain with the Union as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit described below with respect to rates of pay, hours of em-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall substitute a new notice in accordance with our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

[3] Member Acosta finds it unnecessary to pass on this basis.

[4] The petition was signed by employees between January 28 and February 1, 2000.

In finding the withdrawal of recognition unlawful, we do not rely upon *Lee Lumber & Bldg. Material Corp.*, 334 NLRB 399 (2001). That case sets up an insulated period for bargaining *after* an unlawful withdrawal of recognition.

ployment, and other terms and conditions of employment including contributions to health insurance, union security, and wages.

WE WILL NOT withdraw recognition either directly or impliedly from the Union as the exclusive collective-bargaining representative of our employees in the unit described below.

WE WILL NOT refuse to provide the Union with requested information relevant and necessary to its responsibilities as exclusive collective-bargaining representative of our employees including health insurance, job classification, and wage information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, meet and bargain with the Union as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit described below with respect to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> Included: All employees as described in our collective bargaining agreement with the Union including all journeymen and apprentices, electronic pre-press operators, camera/stripper/platemakers, press operators, bindery employees and driver/helpers.
>
> Excluded: All other employees, supervisors and guards as defined in the Act.

WE WILL provide the Union with the information necessary and relevant to its status as exclusive collective-bargaining representative, which the Union requested in May and June 2000.

WE WILL, on request by the Union, rescind any unilateral changes we have implemented in our employees' terms and conditions of employment.

JANO GRAPHICS, INC.

Ann Weinman and *Michelle Youtz, Esqs.,* for the General Counsel.
James W. Michalski, Esq. (Riordan & McKinzie), of Los Angeles, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Los Angeles, California, on June 25–29, 2001. On November 23, 1999, Communications Workers of America, Local 14904, Southern California Typographic and Mailer Union (the Union) filed the charge in Case 31–CA–24241 alleging that Jano Graphics (Respondent) committed certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). On February 14, 2000, the Union filed the charge in Case 31–CA–24350 against Respondent. The charge in Case 21–CA–24350 was amended on April 4, 2000, and again on June 15, 2000. In addition, on June 15, 2000, the Union filed the charge in Case 31–CA–24592 against Respondent. On August 17, 2000, the Regional Director for Region 31 of the National Labor Relations Board (the Board) issued a consolidated complaint and notice of hearing against Respondent, alleging that Respondent violated Section 8(a)(5) and (1) of the Act. Respondent filed timely answers to the complaint, denying all wrongdoing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses,[1] and having considered the posthearing briefs of the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent is a California corporation, with an office and principal place of business in Ventura, California, where it has been engaged in the wholesale printing and engraving business. In the 12 months prior to the issuance of the complaint, Respondent purchased and received goods and materials valued in excess of $50,000 from outside the State of California. Accordingly, Respondent admits and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND AND ISSUES

Respondent operates a printing and engraving shop in Ventura, California. It has had a collective-bargaining relationship with the Union since at least 1991. The parties have had a series of 1-year collective-bargaining agreements since 1991. The most recent collective-bargaining agreement was effective from January 1 until December 31, 1997. The 1997 bargaining agreement covered Respondent's production employees.

On February 3, 1998, the Union filed a charge in Case 31–CA–23194 alleging that Respondent had violated Section 8(a)(1) and (5) of the Act. The charge was amended on March 24, 1998, to allege that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union, unilaterally granting a wage increase, bypassing the Union and dealing directly with employees, and refusing to furnish information to the Union, relevant to collective bargaining. On August 26, 1998, the parties entered into an informal settlement agreement

[1] The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

resolving the case. As part of the settlement agreement Respondent posted a notice stating that it would not: (1) refuse to meet and bargain with the Union; (2) withdraw recognition from the Union; (3) fail to provide requested information, relevant to collective bargaining; (4) bypass the Union and bargain directly with employees; and (5) implement any unilateral changes. As a result of this settlement, a petition to decertify the Union, filed in Case 31–RD–1381, was withdrawn.

However, on October 23, 1998, another decertification petition was filed in Case 31–RD–1398 by employee Lori Sage. That petition was withdrawn based on a determination by the Regional Director that the petition was filed during the compliance period of the settlement in Case 31–CA–23194. Thereafter, on November 10, 1998, Sage filed another decertification petition in Case 31–RD–1400.

On December 9, 1998, the Union filed another charge in Case 31–CA–23636 alleging further violations of Section 8(a)(5) and (1). On March 1, 1999, Respondent entered into a settlement of Cases 31–CA–23194 and 31–CA–23636. In the March 1, 1999 settlement, Respondent agreed not to: (1) refuse to meet and bargain with the Union; (2) withdraw recognition from the Union; (3) refuse to provide relevant information; (4) bypass the Union and bargain directly with employees; (5) unilaterally change wages or other terms and conditions of employment; and (6) refuse to meet and bargain because of the pendency of unfair labor practice charges. Further, Respondent agreed to affirmatively: meet and bargain with the Union over rates of pay, hours of employment, and other terms and conditions of employment including a pension plan, health plan contributions, and/or wage increases.

As consequence of this settlement, the Regional Director dismissed the petition previously file in Case 31–RD–1400. As will be seen below, Respondent filed a petition in Case 31–RM–1267, in February 2000, seeking to decertify the Union. That petition was dismissed pending the outcome of the instant unfair labor practice hearing.

Beginning in March 1999 and continuing until July 29, 1999, the parties met in seven bargaining sessions in an unsuccessful attempt to negotiate a new contract. The parties did not reach agreement and on January 26, 2000, Respondent implemented the terms of its " best and final proposal" to the Union.

Within this factual framework, the General Counsel alleges that Respondent unlawfully conditioned bargaining on its final offer being submitted to the bargaining unit employees for ratification and implemented its final proposal in the absence of a lawful bargaining impasse. Respondent contends that the parties were at impasse and, therefore, it could lawfully implement the terms of its final proposal. Secondly, Respondent contends that the Union had agreed to submit its final proposal to the bargaining unit employees privileging Respondent's declaration of impasse and implementation of its final offer.

The complaint further alleges that Respondent failed and refused to furnish the Union information relevant to collective bargaining. In addition the complaint alleges that Respondent refused to resume bargaining with the Union in June 2000. Respondent asserts that since February 2000, the Union no longer represents a majority of the bargaining unit employees.

Thus, the principal issue, involving Respondent implementation of its "best and final offer" and the resultant changes in the bargaining unit employees' terms and conditions of employment, is whether the parties had reached an impasse in their contract negotiations so as to have permitted the implementation of the proposed contract.

III. THE FACTS

As stated above, the most recent collective-bargaining agreement was effective from January 1 until December 31, 1997. The 1997 collective-bargaining agreement provided:

> ITU NEGOTIATED PENSION PLAN
>
> 22-01. The parties will meet prior to July 1, 1997, to determine a pension plan and employees may divert some wage money towards such a plan.

By letter dated June 20, 1997, the Union requested midterm bargaining regarding a pension plan, and suggested three meeting dates. Respondent made no response. Therefore, the Union sent another letter dated June 30, suggesting three more meeting dates. By letter dated July 14, Respondent stated that it was interested in a plan "not necessarily administered by the Union" and asked that the Union submit a pension proposal in writing, after which Respondent would unilaterally implement a plan it deemed to be "fair and reasonable."

In August, the Union presented Respondent with a written proposal for a new agreement. Respondent made no response. A bargaining session was scheduled for the evening of December 10 at Respondent's premises. However, prior to negotiating with the Union about a pension plan, Respondent unilaterally signed up for a simple IRA plan and announced the plan to its employees. When Alexander (Al) Jannone, president of Respondent, finally notified Ken Prairie, International representative for the Union, of the plan, on December 9, 1997, it was a fait accomplait. Prairie informed Jannone that he was obligated to first bargain with the Union. However, Jannone had already announced the plan and decided to let the plan go into effect. Jannone believed that he and the Union could negotiate an amicable resolution of this issue. The unilateral implementation of the IRA plan was the first of a series of unfair labor practices giving rise to the settlement agreements, which precede the alleged impasse at issue in the instant case. On December 10, Howard Dudley, union president, arrived at Respondent's premises. However, a dispute arose between Dudley and Jannone and no bargaining took place. In January, Respondent, without prior notice or bargaining with the Union, implemented its simple IRA plan and unilaterally granted the bargaining unit employees a wage increase of 1.5 percent. On January 29, 1998, a decertification petition was filed in Case 31–RD–1381.

On February 3, 1998, the Union filed charges in Case 31–CA–23194 alleging that Respondent had failed to bargain in good faith, had refused to furnish relevant information, and had bargained directly with employees. Thereafter, on March 12, 1998, Al Jannone wrote the Union stating, inter alia, that Respondent had deferred bargaining with the Union based on the pending decertification petition but that Respondent was again willing to negotiate with the Union. However, while Respon-

dent agreed to bargain with the Union, it continued to question the Union's majority status stating, "I must advise you that though Jano is willing to meet with you, we have heard nothing from our employees which would lead me to believe that they have changed their opinion about their desire to sever their union relations." As indicated earlier the decertification petition was dismissed and Respondent entered into a settlement agreement on August 26, 1998.

On March 30, Al Jannone and Sally Jannone, his wife, met with Dudley concerning a successor collective-bargaining agreement. Respondent proposed a 2-percent wage increase[2] and that Respondent and the employees split health care contributions on a 50/50 basis. Based on the unfair labor practice charges filed by the Union, Jannone did not bargain with the Union again until late August.

On July 1, Respondent, without prior notice or bargaining with the Union, unilaterally granted a wage increase of .5 percent. On August 24, 1998, Respondent settled the unfair labor practice charges and proposed several changes to the expired collective-bargaining agreement. Most important Respondent proposed that the bargaining unit be redefined so as to include only employees who chose to become union members. The expired agreement had covered all production employees and had included a union-security agreement with dues checkoff. In addition to proposed changes to the bargaining unit description and union security, Respondent made proposals regarding health care, pension, and wages. The Respondent proposed that the agreement be for "no fixed term." On August 31, Al Jannone wrote Howard Dudley, president of the Union, notifying the Union that Respondent had unilaterally given employees a 1-1/2-percent wage increase in January 1998 and another half-percent wage increase in July 1998. Jannone also gave Dudley information regarding the simple IRA plan that Respondent had unilaterally implemented in January 1998.

The Union drafted a counter proposal for a 1-year contract with the employer paying 95 percent of employee health insurance coverage and 75 percent of dependent coverage escalating to 95 percent at the expiration of the contract. In the expired agreement, Respondent paid 50 percent of health insurance coverage. The Union's proposal called for a 4-percent raise in wages. The Union also offered to propose language changing the union-security clause to a maintenance-of-membership agreement.

The parties held four bargaining sessions in the fall of 1998. During these sessions, the parties discussed wages and health premiums. During one session the parties agreed to a lower wage rate for the platemaker classification. The Union also agreed to language permitting Respondent to pay deserving employees at over scale wage rates. As to health benefits, the Union was seeking a higher contribution to premiums from the Respondent. Jannone made clear to the Union that "health care is one of the uncontrollable costs of a company, it is a cost that I can't control and if you introduce a health plan to a company you can't take it away from the employees." Jannone stated that he would pay 50 percent of the health care premiums and that the employees would have to pay 50 percent of the health care premiums. Respondent was taking the position that it would consider a wage increase but would not pay more than 50 percent of health care premiums.

On December 9, 1998, the Union filed the charge in Case 31–CA–23636.[3] As a result of the unfair labor practices, Respondent did not meet with the Union until February 19, 1999. Angered by the unfair labor practice charge, Jannone's wife resigned from Respondent's negotiating team and was replaced by Manager John Candelaria at the February 19, bargaining session. Candelaria, based on a distrust of Dudley, insisted that proposals and tentative agreements be in writing. At the February 19 meeting, Respondent presented a proposal for a contract of "no fixed term," a maintenance-of-membership clause, and recognition of the Union only for employees who were members of the Union. Jannone proposed the no fixed term so that employees could file for decertification of the Union at any time during the contract. Jannone offered the 2-percent wage increase that Respondent had already unilaterally implemented. Respondent offered to pay 50 percent of health care premiums. Candelaria wanted to tape the bargaining session because of "Dudley's credibility problems" but the Union objected to a recording of the session.

On March 1, 1999, Respondent entered into a settlement of Cases 31–CA–23194 and 31–CA–23636. In the March 1, 1999 settlement, Respondent agreed not to: (1) refuse to meet and bargain with the Union; (2) withdraw recognition from the Union; (3) refuse to provide relevant information; (4) bypass the Union and bargain directly with employees; (5) unilaterally change wages or other terms and conditions of employment; and (6) refuse to meet and bargain because of the pendency of unfair labor practice charges. Further, Respondent agreed to affirmatively: meet and bargain with the Union over rates of pay, hours of employment, and other terms and conditions of employment including a pension plan, health plan contributions, and/or wage increases.

On March 5, Respondent again sought to use a tape recorder but the Union objected. Respondent provided the Union with wage information that the Union had requested. However, the Union claimed to still have questions regarding the 1998-wage increases. Jannone complained about the Union's filing of unfair labor practice charges.

Bargaining sessions were held on April 7 and 13. The parties continued to discuss the duration of the contract, wages, pension plan, health care, and maintenace of membership/union security. No agreements were reached at these meetings. Respondent was still seeking a contract of no fixed term so that "the employees could decide whether to keep the Union." Respondent was also still proposing the already implemented wage increase and its proposal that the employees pay 50 percent of health care premiums. The Union sought a 2-year contract with a 4-percent wage increase and an additional 2-percent wage increase which could be diverted to health care premi-

[2] Respondent had already implemented 1.5 percent of the proposed 2-percent wage increase in January 1998. The remaining .5-percent wage increase was unilaterally implemented in July 1998.

[3] Lori Sage had filed the decertification petition in Case 31–RD–1400 on November 10, 1998.

ums. At these sessions Jannone repeatedly stated that the employees did not want the Union.

On April 28, Fred Jannone, son of Al Jannone, attended the bargaining session to give the Union certain information pertaining to wages. At this session Al Jannone asked the Union what it would take for the Union to accept a maintenance-of-membership clause instead of the Union's union-security clause. In response, the Union presented a written counterproposal calling for a 4-percent wage increase and a union dues-deduction clause indicating voluntary membership, with specific language "to be worked out."

On May 5, 1999, Respondent provided the Union with information regarding wages, health insurance deductions, union dues deductions, tentative agreements, and recognition/union security. Respondent stated that its position on union security was based on the decertification petition filed with the Board. A decertification petition in Case 31–RD–1400 was filed on November 10, 1998. That petition was dismissed on May 5, 1999, based on the charge in Case 31–CA–23194. Notwithstanding that Respondent settled Case 31–CA–23636 on March 1, 1999, with an affirmative bargaining obligation, it was still relying on the Union's weakened majority status in negotiations.

On June 3, 1999, the parties reached tentative agreement on recognition and jurisdiction of the Union. The parties also reached tentative agreement on general language of the contract, overtime, struck work, picket line, grievance procedure, workweek, lunch period, holidays, shifts, call back, reproduction, foremen, sanitary regulations, vacations, priority claims, sick leave, severance pay, and apprentice regulations. The only remaining issues were term of the agreement, rates of pay, health care contributions, pension plan, and union security.

On June 11, the Union made a proposal for a 1-year term of agreement, a 2-percent wage increase based on the previous wage increases with a new 4-percent wage increase, an employer contribution of 85 percent of health premiuns to be raised 5 percent in 6 months and another 5 percent at 12 months. The proposal also required the employer to pay 85 percent of health premiums for dependents rising to 95 percent after 1 year. The proposal called for dues-checkoff language to be worked out later and that the Union would be notified of any changes in scale and new employees. The Union modified this proposal twice during the June 11 meeting. That same date the Union requested information regarding Respondent's labor costs and health care costs. Respondent proposed a 2.6-percent wage increase (total) and no change in the 50/50 healthcare split.

On June 14, Jannone wrote the Union agreeing to a 1-year contract and agreeing to provide requested information. Jannone also confirmed that the Union had agreed to his existing IRA as a pension plan for employees. Jannone summarized that the parties were at that time separated by three issues: union security, wages, and health care contributions.

On June 24, Dudley wrote Jannone confirming that he had received the requested information regarding health insurance but requested additional information regarding a proposed increase in health premiums.

On July 29, the parties met at the offices of a Federal mediator. The Union proposed an increase of 1-1/2 percent effective August 1998 and a 3-percent increase effective August 1, 1999. The Union further proposed that Respondent pay 60 percent of employee health care premiums rising to 70 percent at the end of 6 months. The Union also proposed the same union-security clause as the prior contract. The Respondent proposed a 3-percent wage increase over the 1997 contract (in effect, a 1-percent wage increase). The Employer further adhered to its position that it would only pay 50 percent of health care benefits and that the employees pay the other 50 percent of premiums. The Employer proposed maintenance of membership instead of union security. The Employer agreed to notify the Union of changes in scale and new employees and any changes in the pension program. The Union changed its wage proposal but did not change its other proposals. The Employer countered with a higher wage proposal but maintained its position on health insurance and maintenance of membership. Throughout negotiations Respondent maintained the position that it could not control health care costs and would only pay 50 percent of health care contributions. In the Union's third proposal of that date, the Union proposed the wage increases of 1998 and a 3-percent wage increase in 1999. It proposed that the Employer pay 75 percent of employee health care contributions raising 10 percent in 6 months and another 10 in 12 months. The percentages for dependent coverage were 70-percent rising every 6 months to 95 percent. The Union changed its proposal and agreed to maintenance of membership with dues checkoff contingent on the Employer agreeing to its wage and health insurance package. The Union also proposed an alternative package. The alternative proposal included union security but lowered the Employer contributions to 60 and 70 percent after 8 months. Respondent proposed what it termed its "Company's Best and Final Offer." In this best and final offer the Company proposed wages at 4 percent above the 1997 contract. It continued to adhere to its 50-50-percent offer on health care contributions and maintenance of membership. Respondent requested that the Union take its best and final offer to the employees for ratification.

At first, Prairie refused to take the offer to the employees. After consultation with Dudley, Prairie agreed that the Union would "run it by the employees." However, Prairie did not agree to ratification. Evidently, it was the intention of the Union to take a poll of the bargaining unit employees as opposed to taking a ratification vote of the union membership.[4] However, the Union later decided to pursue further bargaining and did not take a poll of the employees.

On July 30, Al Jannone wrote Dudley enclosing a typed copy of Respondent's best and final offer and asking for notification of a ratification vote. Dudley wrote Jannone on August 2, questioning what Janone meant by "best and final." Apparently, Dudley was prepared to argue that since Jannone had not said "last, best and final offer," the Employer had not made its

[4] Under the Union's constitution and bylaws a ratification vote is voted on by the entire membership of the Union and not merely by the bargaining unit. Jannone wanted a ratification vote of his bargaining unit employees.

last offer to the Union. Dudley further requested information regarding the employees then on Respondent's payroll. Dudley asked a question about Respondent's hand bindery employees and questions about Respondent's maintenance-of-membership proposal. For the first time, Dudley raised the question of agency fees. Dudley also raised disingenuous questions about the notice provisions of Respondent's proposals. Dudley requested a response from Jannone by August 6. On August 4, Dudley wrote Jannone requesting further negotiations. Dudley stated that he wished to discuss Respondent's most recent proposal and that he wished to make additional proposals to Respondent. Dudley offered to have the Federal mediator present, if Jannone so desired.

On August 6, Jannone wrote Dudley answering the questions raised by Dudley in his July 30 letter. Jannone stated that Respondent had made its final offer and that Dudley knew what that meant. Jannone supplied the information concerning the bargaining unit employees. In addition, Jannone explained that he had agreed to the Union's proposal regarding bindery employees. He further explained that Respondent had agreed to dues checkoff for those employees who had voluntarily agreed to checkoff. He also explained his agreement to notify the Union of changes in wage rates and of new hires. Finally, he stated that Respondent had agreed to notify the Union prior to any changes in the pension plan. Thus, by August 6, Respondent had answered Dudley's questions but had not responded to his August 4 request to bargain. On August 9, Jannone replied to Dudley's August 6 letter. Jannone claimed that the Union had agreed to present the Employer's final offer to the bargaining unit employees for acceptance or rejection. Jannone stated that he would not meet again until after the employees rejected or accepted his final offer. In effect, Jannone conditioned further bargaining on the Union holding a vote on his best and final offer.

On August 10, Dudley wrote Jannone again requesting further bargaining. Dudley stated, "[A]lthough we did tell you that we intended to have our members votre, we never intended that to be a final vote on acceptance or rejection of any final offer." Dudley took the position that he seeks employee input but that in this case, "it would be premature to take any vote on these questions." Dudley stated that the Union still had questions and further proposals to make. Dudley stated that the Union wished to further discuss health care contributions and requested that Jannone provide correspondence between Respondent and its health insurance provider.

On August 17, Jannone responded to Dudley's letter of August 7. Jannone accused Dudley of engaging in self-serving rhetoric to aid the Union's unfair labor practice charges. Jannone accused Dudley of "weaseling" out of his agreement to submit the best and final offer for ratification. Jannone again requested that Dudley submit the agreement for ratification and again refused to meet until the ratification vote was held. He argued that the Union had already had 18 months to submit its proposals. He urged Dudley to submit any new proposals in writing to him. Jannone stated that he would post a copy of the letter for employees to see.

On August 24, Dudley answered Jannone's August 17 letter. Dudley insisted that the parties had not reached impasse. He again stated that the Union had questions about the best and final offer and had additional proposals to make. He further argued that it was unlawful for Jannone to condition bargaining on the submission of questions and/or proposals in writing. Dudley again took the position that it was premature to take Respondent's offer back to the bargaining unit employees. Dudley argued that there was merit to the unfair labor practice charges and that Respondent had entered into two settlement agreements. Dudley again requested bargaining and proposed various dates for such meetings. On August 25, Jannone replied that Dudley's August 24 letter did not change his position. Jannone again took the position that there was no reason to meet until the employees had voted on the best and final offer. Jannone reiterated his position that the parties were at impasse on July 29.

On August 30, Dudley again wrote Jannone denying an impasse and seeking to return to the bargaining table. Dudley asked for information to explain previously received information regarding health care costs. On September 2, Jannone wrote Dudley again arguing that the parties reached impasse on July 29. Jannone argued that Dudley had received all the information regarding health care insurance and was no longer acting in good faith. However, Jannone continued to supply information.

On January 27, 2000, Respondent posted on its bulletin boards its "Jano Graphics Final Offer," the same proposal it had made to the Union on July 29, 1999. The posting stated, "[A]s you know Jano Graphics put into effect its final offer to the Union. Jano Graphics will now be operating in accordance with the terms of that Final Offer. To make you familiar with those terms, I have outlined the changes that became effective yesterday, January 26, 2000." The notice then listed the changes to the following topics; wages, six-color press, union security, health insurance, term of agreement, language, and new sections. These changes were consistent with the best and final offer made to the Union on July 29, 1999.

On January 28, employee Lori Sage circulated a petition stating that the employees no longer wished to be represented by the Union. All but one of the bargaining unit employees signed the petition.[5] The employees all knew that negotiations between the Respondent and Union had broken down and that Respondent had unilaterally implemented its best and final offer. Based on the employee petition, on February 1, Respondent filed the petition in Case 31–RM–1267.

On March 1, 2000, Dudley wrote Jannone seeking to negotiate over wages, term of agreement, and union security. The next day, March 2, Dudley requested following information from Respondent:

> (1) The hourly rate paid to each employee as well as the total wages received by each employee each month;

[5] Sage had previously filed two decertification petitions. The petition in Case 31–RD–1398 was filed on October 23, 1998, and withdrawn on November 2, 1998. The petition in Case 31–RD–1400 was filed on November 10, 1998, and was dismissed on May 5, 1999. The petitions were withdrawn and dismissed based on the Respondent's undertakings in the August 26, 1998, and March 1, 1999 settlement agreements.

> (2) the number of hours worked by each employee each month (3) payments made to employees other than their regular wages (i.e., their hourly rate multiplied by the number of hours worked); (4) deductions from each employee each month broken down by the types of deductions; (5) the classification of each employee and, if a change was made, the date of the change; and (6) the status of each employee, i.e., whether the employee is a journeyman or apprentice and, if a change was made, the date of the change.

On March 13, Jannone wrote Dudley denying the information based on the employee petition it received on January 28. Also on March 13, Jannone wrote Dudley refusing to bargain based on the then pending petition in Case 31–RM–1267.

On May 26, Dudley wrote Janone seeking to resume collective bargaining after the Board's General Counsel had authorized a refusal to bargain complaint against Respondent. Dudley again requested information regarding the unit employees and information concerning communications between Respondent and its health insurance provider. Dudley did not receive a response to his May 26 letter, and, therefore, on June 6 again wrote Jannone seeking to resume negotiations and requesting further information for bargaining. On June 5, Jannone denied Dudley's requests for bargaining and his requests for information. Jannone took the position that the parties had been at impasse on July 29, 1999, and January 26, 2000.

IV. ANALYSIS AND CONCLUSIONS

A. The Alleged Impasse

As stated earlier, the first issue is whether the parties reached impasse in their negotiations so as to permit Respondent to implement its final offer. By definition, an impasse occurs whenever negotiations reach that point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless. *Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete*, 484 U.S. 539, 543 (1988). After an impasse has been reached on one or more subjects of bargaining, an employer may implement any of its preimpasse proposals. *Western Publishing Co.*, 269 NLRB 355 (1984).

"A genuine impasse in negotiations is synonymous with a deadlock; the parties have discussed a subject or subjects in good faith, and, despite their best efforts to achieve agreement with respect to such, neither party is willing to move from its respective position." *Hi-Way Billboards, Inc.*, 206 NLRB 22, 23 (1973). In *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968), the Board listed the following factors for determining whether an impasse existed:

> The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of the negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

The Board has further held that, even if impasse is reached over an issue, it may be broken if one of the parties moves off its previously adamant position. *Tom Ryan Distributors*, 314 NLRB 600, 604–605 (1994), enfd. mem. 70 F.3d 1272 (6th Cir. 1995) (no impasse found where union demonstrated intent to move on key issue, parties had met only eight times before employer declared impasse, and the key issue had been discussed conceptually but not in detail). "As a recurring feature in the bargaining process, impasse is only a temporary deadlock or hiatus in negotiations 'which in almost all cases is eventually broken, through either a change of mind or the application of economic force.'" *Charles D. Bonanno Linen Service v. NLRB*, 454 U.S. 404, 412 (1982), quoting 243 NLRB 1093–1094 (1979). See *Royal Motor Sales*, 329 NLRB 760 (1999).

Finally, because impasse as a defense to a charge of an unlawful unilateral change, the burden of proof rests on the party asserting that impasse exists. *North Star Steel Co.*, 305 NLRB 45 (1991); *Roman Iron Works*, 282 NLRB 725 (1987).

In the instant case the parties met in 13 bargaining sessions from March 31, 1998, to July 1999, prior to Respondent's implementation of its final offer in January 2000. However, the parties only met seven times in the 5 months after the March 1, 1999 settlement agreement. I find the fact that such bargaining took place for less than 6 months weighs against a finding of impasse. The inability of the Federal mediator to facilitate an agreement is a factor supporting a finding of impasse. *NLRB v. Cambria Clay Products Co.*, 215 F.2d 48, 55 (6th Cir. 1954). Respondent argues that there was no prospect of an agreement and that the Union was never going to agree to its proposal for 50-50-percent health care contributions or a maintenance-of-membership clause. The Union contends that it would have agreed to the Employer's health proposal if wages could be agreed upon and that it had offered to agree to maintenance of membership if wages and health care contributions were resolved. The Union further argues that it notified the Employer that it had additional proposals but that the employer would not meet and bargain. It is undisputed that Respondent conditioned further bargaining on the Union taking the Employer's best and final offer to a ratification vote.

While Respondent argued in July 1999 and January and May 2000, and again at the instant hearing that the parties were at impasse, "both parties must believe they are at the end of their rope." *Larsdale, Inc.*, 310 NLRB 1317, 1318 (1993); *Huck Mfg. Co. v. NLRB*, 693 F.2d 1176, 1177 (5th Cir. 1982). See also *NLRB v. Powell Electrical Mfg.*, 906 F.2d 1007, 1011–1012 (5th Cir. 1990). Recently in *Grinnell Fire Protection Systems Co.*, 328 NLRB 585 (1999), the Board concluded that the parties had not yet reached a legal impasse even though the employer asserted that it had reached its final position, as during the final session, the charging party-union "not only continued to declare its intention to be flexible, but demonstrated this throughout its dealings with the Respondent that day." The Board stated:

> Where as here, a party who has already made significant concessions indicates a willingness to compromise further, it would be both erroneous as a matter of law and unwise as a matter of policy for the Board to find impasse merely because

> the party is unwilling to capitulate immediately and settle on the other party's unchanged terms. . . . Further, even assuming arguendo that the Respondent has demonstrated it was unwilling to compromise any further, we find that it has fallen short of demonstrating that the Union was unwilling to do so. [Id. at 586.]

In this case, the Union continually argued that the parties were not at impasse. It is not sufficient for a finding of impasse to simply show that the Employer had lost patience with the Union or its chief negotiator. Impasse requires a deadlock. As the Board stated in *Powell Electrical Mfg. Co.*, 287 NLRB 969, 973 (1987):

> That there was no impasse when the Company declared is not to suggest that if the parties continued their sluggish bargaining indefinitely there would have been agreement on a new contract. Such a finding is not needed, nor could it be made without extra-record speculation, to find on this record that when the Company declared an impasse there was not one, even as far apart as the parties were. They had most of their work ahead of them, and judging by the opening sessions clearly had different goals in mind for a contract. Whether their differences ever would have been resolved cannot be known; but that is the nature of the process. It is for the parties through earnest, strenuous, tedious, frustrating and hard bargaining to solve their mutual problem—getting a contract—together, not to quit the table and take a separate path.

As stated above, the fact that Al Jannone believed that the Union would never agree to Respondent's contract proposals does not establish an impasse. In light of the Union's proposals at the July 29, 1999, I cannot find the parties had reached a deadlock in their negotiations. Even assuming a temporary deadlock on July 29, in early August, Dudley notified Jannone that the Union had questions about Respondent's final offer and had additional proposals to make. Respondent was not privileged to deny that request to bargain. Jannone could not create an impasse simply by insisting that he was not going to move from his bargaining position.

The union did not agree to take Respondent's best and final offer to ratification. Ratification is an internal Union matter. While the Union did agree to poll the employees, there was no consideration for that agreement. The Union could upon further reflection of Respondent's offer decide to bargain further before polling the employees. As the Board stated in *Cotter & Co.*, 331 NLRB 787 (2000), in finding no impasse:

> The Respondent contends, however, that the union negotiators' respose to its "last, best and final offer'—that the Respondent was not offering anything that the Union could recommend to its employees—establishes that the parties were at impasse. We are not persuaded. It is a commonplace that experienced negotiators make concessions cautiously and that negative initial reactions are later reconsidered in order to obtain an agreement. [Id.]

Here, on August 4, Dudley wrote Jannone requesting further negotiations. Dudley stated that he wished to discuss Respondent's most recent proposal and that he wished to make additional proposals to Respondent. Dudley offered to have the Federal mediator present, if Jannone so desired. On August 9, Jannone stated that he would not meet again until after the employees rejected or accepted his final offer. Jannone conditioned further bargaining on the Union taking Respondent's best and final offer to the employees for a vote of acceptance or rejection. On August 10, Dudley wrote Jannone again requesting further bargaining. Dudley stated, "[A]lthough we did tell you that we intended to have our members votre, we never intended that to be a final vote on acceptance or rejection of any final offer." Dudley took the position that he seeks employee input but that in this case, "it would be premature to take any vote on these questions." Dudley stated that the Union still had questions and further proposals to make. Dudley stated that the Union wished to further discuss health care contributions.

On August 24, Dudley insisted that the parties had not reached impasse. He again stated that the Union had additional proposals to make. Dudley again took the position that it was premature to take Respondent's offer back to the bargaining unit employees. Dudley argued that there was merit to the unfair labor practice charges and that Respondent had entered into two settlement agreements. Dudley again requested bargaining and proposed various dates for such meetings. On August 25, Jannone replied that Dudley's August 24 letter did not change his position. Jannone again took the position that there was no reason to meet until the employees had voted on the best and final offer. Jannone reiterated his position that the parties were at impasse on July 29.

First, under Section 8(d) of the Act, Respondent was obligated to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. Respondent has not proven a lawful impasse sufficient to excuse its obligations under Section 8(d). Further Respondent was unlawfully conditioning bargaining upon a ratification vote, a nonmandatory subject of bargaining. See *Detroit Newspapers*, 327 NLRB 799 (1999); *Sheet Metal Workers Local 263 (Sheet Metal Contractors)*, 272 NLRB 43 (1984).

I find that in August 1999, and in January 2000, there was still more earnest, tedious, strenuous, frustrating, and hard bargaining remaining before agreement or impasse was reached. In general, impasse on one or several issues does not suspend the obligation to bargain on remaining, unsettled issues. *Patrick & Co.*, 248 NLRB 390 (1980), enfd. mem. 644 F.2d 889 (9th Cir. 1981); *Atlas Tack Corp.*, 226 NLRB 222 (1976), enfd. mem. 559 F.2d 1201 (1st Cir. 1977). The Union expressed, on several occasions, its belief that if wages could be worked out it could agree to Respondent's health proposal or if wages and benefits could be worked out it could agree to maintenance of membership. I find the Union's proposals and concessions at the July 29 meeting make it inappropriate for me to conclude that impasse had been reached. Further in early August, the Union stated that it had further questions and additional proposals. I find that Respondent's president, Al Jannone, had lost patience with the Union and Dudley and was no longer willing to explore the possibility of narrowing the issues or reaching agreement. Further, Jannone was unlawfully insisting on a ratification vote.

In summation, the fact that Respondent's president believed that the Union would never agree to its contract proposals does not establish an impasse. In light of the findings regarding the Union's proposals and concessions and the Respondent's prior unilateral granting of benefits and wage increases, I cannot find the parties had reached a lawful impasse or deadlock in their negotiations in July 1999. I find insufficient evidence that such condition changed in January 2000, when Respondent again declared impasse in an attempt to justify its unilateral implementation of its best and final offer. Rather the situation had been made worse by Jannone's refusal to bargain unless and until the Union submitted his offer to the employees for ratification. No progress was made between July 29, 1999, and January 26, 2000, because Respondent had unlawfully refused to bargain any further with the Union.

In addition, I note that Respondent continued to question the Union's majority status in spite of two settlement agreements in which Respondent affirmatively agreed to recognize and bargain with the Union for a reasonable period of time. The Board has held that "a reasonable period of time" in such cases is at least 6 months. See *Lee Lumber & Bldg. Material Corp.*, 334 NLRB 399 (2001); *Wyndham Palmas del Mar Resort & Villas*, 334 NLRB 514 (2001). In the instant case, Respondent had entered a settlement agreement on March 1, 1999, agreeing to recognize and bargain with the Union. However, as early as May 5, 1999, Jannone was questioning the Union's majority status and making proposals regarding maintenance of membership based on a majority status weakened by unilateral changes and other unfair labor practices. Jannone continued to question the Union's majority status throughout the bargaining process.

As I have found that on January 26, no lawful impasse existed, Respondent's implementation of the terms of its final offer that day, without the agreement of the Union, was violative of Section 8(a)(1) and (5) of the Act. *Royal Motor Sales*, 329 NLRB 760 (1999); *WPIX, Inc.*, 293 NLRB 10 fn. 1 (1989), enfd. 906 F.2d 898 (2d Cir. 1990); *Sacramento Union*, 291 NLRB 552, 557 (1988).

Further, Respondent cannot rely on the employee petition of January 28, 2000, to establish a lack of majority status. In *Lee Lumber & Bldg. Material Corp.*, supra, the Board reaffirmed that when an employer has unlawfully refused to recognize or bargain with an incumbent union, any employee disaffection arising during the course of the unlawful conduct will be presumed to be caused by that conduct. Absent unusual circumstances, the presumption can be rebutted only if the employer can show that the disaffection arose after it resumed recognizing the union and bargained for a reasonable period of time without committing other unfair labor practices that would adversely affect the bargaining. The Board modified the "reasonable period of time" standard, however. It held that, in such circumstances, a "reasonable period of time" before the union's status as the employees' bargaining representative can be challenged will be no less than 6 months and no more than 1 year. Here, the employee dissatisfaction arose only 2 days after Respondent had unlawfully implemented its best and final offer in the absence of a lawful impasse. See also *Wyndham Palmas del Mar Resort & Villas*, supra.

B. The Refusal to Furnish Information

In the instant case, after the unlawful implementation of January 26, 2000, the Union continued to seek to negotiate for a collective-bargaining agreement. In furtherance of that objective, the Union requested information relevant to the collective-bargaining process. Respondent continued to adhere to its legally incorrect position that the parties were at impasse. Respondent compounded its errors by refusing to provide the relevant information to the Union.

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, subject to the bargaining unit provisions of Section 9(a). The duty to bargain in good faith requires an employer to furnish information requested and needed by the employees' bargaining representative for the proper performance of its duties to represent unit employees of that employer. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). A union's request for information regarding the terms and conditions of employment of the employees employed within the bargaining unit represented by the union, is "presumptively relevant" to the union's proper performance of its collective-bargaining duties, *Samaritan Medical Center*, 319 NLRB 392, 397 (1995), because such information is at the "core of the employee-employer relationship," *Graphics Communications Local 13 v. NLRB*, 598 F.2d 267, 271 fn. 5 (D.C. Cir. 1959), thus it is relevant by its "very nature." *Emeryville Research Center v. NLRB*, 441 F.2d 880, 887 (9th Cir. 1971).

Therefore, an employer's statutory obligation to provide information presupposes that the information is relevant and necessary to a union's bargaining obligation vis-a-vis its representation of unit employees of that employer. *White-Westinghouse Corp.*, 259 NLRB 220 fn. 1 (1981). Whether the requested information is relevant and sufficiently important or needed to invoke a statutory obligation to provide it is determined on a case-by-case basis. Id.

In making this determination of relevance, the Board has followed the following principles:

> Wage and related information pertaining to employees in the bargaining unit is presumptively relevant, for, as such data concerns the core of the employer-employee relationship, a union is not required to show the precise relevance of it, unless effective employer rebuttal comes forth; as to other requested data, however, such as employer profits and production figures, a union must, by reference to the circumstances of the case, as an initial matter, demonstrate more precisely the relevance of the data it desires.

Curtiss-Wright Corp. v. NLRB, 347 F.2d 61, 69 (3d Cir. 1965), cited with approval in *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993).

> Thus, if the requested information goes to the core of the employer-employee relationship, and the employer refuses to provide that requested information, the employer has the burden to prove either lack of relevance or to provide adequate reasons why it cannot, in good faith, supply the information. If the information requested is shown to be irrelevant to any

> legitimate union collective-bargaining need, however, a refusal to furnish it is not an unfair labor practice.

Coca-Cola Bottling Co., 311 NLRB at 425 (citing *Emeryville Research Center v. NLRB*, 441 F.2d 880 (9th Cir. 1971)).

The standard to determine a union's right to information will be "a broad discovery type standard," which permits the union access to a broad scope of information potentially useful for the purpose of effectuating the bargaining process. *NLRB v. Acme Industrial*, 385 U.S. at 437 fn. 6; See also *Anthony Motor Co.*, 314 NLRB 443, 449 (1994). There only needs to be "the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Acme Industrial*, 385 U.S. at 437.

Even had the parties been at impasse, Respondent would still have been obligated to provide the relevant information.

> The bargaining process, itself, contemplates that passage of time following such a hiatus will lead one or the other party to modify its position(s) on deadlocked issues, ibid., and, once that occurs, all parties are obliged to resume negotiations in a renewed effort to reach agreement on terms for a collective-bargaining contract. Accordingly . . . impasse . . . served only to interrupt the ongoing process of bargaining for a contract; it did not serve to interrupt or suspend the Union's status as the statutory bargaining agent of employees in the historic bargaining unit.
>
> As a general proposition, during such a hiatus in negotiations for a contract, an employer's duty to disclose relevant information is no different, and certainly no less, than exists before impasse. For, "wage and related information pertaining to employees in the bargaining unit should, upon request, be made available to the bargaining agent without regard to its immediate relationship to the negotiation or administration of the collective-bargaining agreement," *Whitin Machine Works*, 108 NLRB 1537, 1541 (1954), enfd. 217 F.2d 593 (4th Cir. 1954), since "a labor organization's right to relevant information is not dependent upon the existence of some particular controversy or the need to dispose of some recognized problem." [Citations omitted.] *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348, 361 (D.C. Cir. 1983). *Retlaw Broadcasting Co.*, 324 NLRB 138, 141 (1997).

Therefore, Respondent could not justify its refusal to provide the presumptively relevant information to the Union simply because the request was made after an alleged impasse. Respondent remains under a duty to provide this information.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union, by conditioning bargaining upon a ratification vote, by unilaterally implementing its final contract proposal on January 26, 2000, and by withdrawing recognition from the Union after February 2000.

4. Respondent has violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with information concerning health insurance, job classifications, and wages.

5. Respondent's conduct in paragraphs 3 and 4 above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the purposes and policies of the Act. For the reasons stated by the Board in *Cateair International*, 322 NLRB 64 (1996), and *Wyndham Palmas del Mar Resort & Villa*, supra, I find that an affirmative bargaining order is warranted in this case for the Respondent's unlawful refusal to bargain with the Union in August 1999, and its unlawful withdrawal of recognition from the Union in March 2000.

First, an affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the employer in August 1999 and again in February 2000. At the same time, the affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation. This is particularly important in this case because Respondent's unfair labor practices have tainted decertification petitions and Respondent has continually questioned the Union's majority status. The Union should be free for a reasonable period of time from such actions.

Second, The affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes Jannone's incentive to delay bargaining in the hope of further encouraging the filing of another decertification petition. It also ensures that the Union will not be pressured, by the possibility of another decertification petition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practices and issuance of a cease-and-desist order.

Third, a cease and desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent's violations because it would permit a decertification petition to be filed before the Respondnet had afforded the employees a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement. In this case, there is every reason to believe that a decertification petition will be filed as soon as permitted by the Board. A decertification petition prior to a reasonable period of good-faith bargaining would be particularly unfair in these circumstances, where a series of settlement agreements, unfair labor practices, and litigation, has taken over 3-1/2 years, thereby heavily tainting the employee dissatisfaction from the Union. In this case, I find that the above circumstances out weigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union represen-

tation. For the foregoing reason, I recommend an affirmative bargaining order with its temporary decertification bar as a remedy for the violations found in this case.

On the foregoing findings of fact and conclusions of law, and upon the entire record, I issue the following recommended[6]

ORDER

The Respondent, Jano Graphics, Inc., Ventura, California, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively by unilaterally implementing its final contract offer to the Union on January 26, 2000.

(b) Conditioning bargaining with the Union on submission of Respondent's proposal to the bargaining unit employees for ratification.

(c) Refusing to meet and bargain with the Union as the exclusive collective-bargaining representative of Respondent's employees in the appropriate bargaining unit with respect to rates of pay, hours of employment, and other terms and conditions of employment including contributions to health insurance, union security, and wages.

(d) Withdrawing recognition either directly or impliedly from the Union as the exclusive collective-bargaining representative of Respondent's employees in the unit described.

(e) Refusing to provide the Union with requested information relevant and necessary to its responsibilities as exclusive collective-bargaining representative of Respondent's employees including health insurance, job classification, and wage information.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, meet and bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate bargaining unit described below with respect to rates of pay, hours of employment, and other terms and conditions**,** and if an understanding is reached, embody such understanding in a signed agreement. The appropriate bargaining unit is:

> Included: All employees as described in our collective bargaining agreement with the Union including all journeymen and apprentices, electronic pre-press operators, camera/stripper/platemakers, press operators, bindery employees and driver/helpers.
>
> Excluded: All other employees, supervisors and guards as defined in the Act.

(b) Within 14 days from the date of this order, provide the Union with the information, necessary and relevant to its status as exclusive collective-bargaining representative, which the Union requested in May and June 2000.

(c) On request by the Union, rescind any unilateral changes it has implemented in its employees' terms and conditions of employment.

(d) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix"[7] at its location in Ventura, California. Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced or covered by other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since August 9,1999.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 31, a sworn certification of a responsible official on a form provided by Region 31 attesting to the steps the Respondent has taken to comply herewith.

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[6] All motions inconsistent with this recommended order are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."